The Solicitors' Journal

VOL. LXXXV. **Saturday, October 25, 1941.** No. 43

Editorial, Publishing and Advertisement Offices: 29–31, Breams Buildings, London, E.C.4. Telephone: Holborn 1403.
SUBSCRIPTIONS: Orders may be sent to any newsagent in town or country, or, if preferred, direct to the above address.
Annual Subscription: £3, *post free*, payable yearly, half-yearly, or quarterly, in advance. *Single Copy:* 1s. 4d., *post free.*
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Current Topics.

The Chief Metropolitan Magistrate.

AFTER a comparatively brief tenure of the office of chief metropolitan magistrate since 1940, Sir ROBERT ERNEST DUMMETT died on 18th October, 1941. Called to the Bar at Gray's Inn in 1895, he was elected a Bencher of his Inn in 1918 and in 1928 he became Treasurer. His quickness of mind and the thoroughness of his method were apparent from the commencement of his career, and the late Sir SAMUEL EVANS, in whose chambers he worked at one time, expressed a high opinion of him. Throughout his career he showed the qualities which bring success, and his interlocutory work which, as those who practise in the High Court know, is among the most exacting and difficult work at the Bar, was always perfect. Before his appointment as a metropolitan police magistrate in 1925, he had been Recorder of South Molton, and later Recorder of Barnstaple and Bideford. As befitted a police magistrate, he knew the police force from the inside, for during the last war he was an Inspector of the Metropolitan Special Constabulary. An able magistrate, he occupied the Bench at the Bow Street court with dignity and efficiency. It is interesting to recall that the Bow Street court was the first of the metropolitan police courts to be established, and the tradition of the court and the publicity surrounding it, demanded a high standard from the Bench, and obtained it from its late magistrate. Of Sir ROBERT it may well be said "*Finis coronat opus.*"

Loose Coupons.

SIR GERVAIS RENTOUL, the magistrate at the West London Police Court, made a strong observation about an alleged loophole in the Consumers Rationing Order, 1941, when ten well-known and reputable London stores were each fined £30 and ten guineas costs for breach of the order, on 9th October, 1940. The accused were charged under para. 3 of art. 1 of the Order, which provides that except where the goods are ordered by post, a trader shall not supply rationed goods against the surrender of coupons of a kind comprised in a ration document unless the ration document shall have been produced to him and he shall have detached therefrom the appropriate number of coupons. Paragraph 4 provides that a trader shall not supply rationed goods ordered by post unless he shall have received from the retail customer to be supplied the appropriate number of coupons signed on the back by the customer. The learned magistrate asked prosecuting counsel: "Supposing a person goes into a shop with those (loose) coupons and the shop refuses to take them, and he says, 'Very well, give me a piece of paper,' and he writes down an order, and then he says: 'Now give me an envelope,' and drops the coupons into the envelope, seals it up, writes his name on the back, and then goes out and puts it into a pillar box, would that be within the law?" On the prosecuting counsel answering in the affirmative, Sir GERVAIS replied: "Then why not take the coupons? It is rather an absurdity." In giving judgment, he said that these regulations were part of the nation's war economy, and were essential to secure an equitable distribution of supplies and to save shipping space. With regard to the postage of loose coupons, the learned magistrate said that it had been suggested to him that this was an obvious loophole for anyone wishing to evade the law, and that facilities were actually provided in some shops for the coupons to be posted there, thus keeping within the law, but violating its intentions. He wondered how such an anomaly should be allowed to exist, and why some official certification of the coupons at the Post Office or elsewhere should not be devised so as to afford a proper check. It is interesting to note that the Board of Trade recently issued an order to assist shopkeepers by enforcing the display of an official notice stating that it is illegal to offer or accept loose coupons of a kind comprised in a ration document—except for orders by post or in other circumstances expressly authorised by the Board of Trade, and that offenders are liable to prosecution. The notice had to be on display by 19th October in all shops or departments of stores and market stalls where rationed cloth, clothing, footwear and knitting wool are sold. It is not quite correct to talk of a loophole in the Consumer Rationing Order, as the compulsory signature by the customer of coupons sent by post provides a sufficient check against abuse.

War Damage Claims.

A QUESTION in the House of Commons on 16th October related to alleged complaints of excessive delay in the settlement of claims for damaged houses. Sir R. GOWER asked the Financial Secretary to the Treasury whether the War Damage Commission possessed enough staff, and whether he could state the approximate time which should elapse before the claimant secured some indication of the intention of the Commission. In reply, Captain CROOKSHANK said that he did not consider that there had been excessive delay in dealing with war damage claims in view of the very large number of notifications of damage which the War Damage Commission took over from the Inland Revenue Department when it began work. These had to be dealt with alongside the new notifications coming in under the War Damage Act. The Commission, he stated, had now almost overtaken those very considerable arrears, and the bulk of the claimants had had an indication of the Commission's intention in the issue to them of the claim form appropriate to the apparent degree of damage. The remainder, he said, should receive the forms in the course of the next few weeks. Thereafter, so far as could be foreseen, the staff would be adequate for the issue of claim forms immediately on notification of damage. Settlement of claims in cost of works cases proceeded as the claim forms were returned; many had already been paid. He added that in cases where a value payment was considered appropriate, payment would not normally be made until the end of the war, and in the meantime the claim bears interest at 2½ per cent. In answer to a further question, Captain CROOKSHANK said that the number of staff of the basic executive clerical and sub-clerical grades, including temporary employees, at present employed by the War Damage Commission was 1,169 and the annual cost of the staff was approximately £225,000. Further welcome news on this subject is that the War Damage Commission has agreed with the National Federation of Building Trades Employers that a builder whose account is disputed may refer the matter to a regional assessor appointed by the Federation. If the assessor does not support the claim, the amount in dispute will be disallowed. If he considers that the case warrants further examination, the Commission will refer it for advice to the Deputy Commissioner for the area.

War Damage to Private Chattels.

THE latest Treasury Order under the War Damage Act is the War Damage to Goods (General) (No. 2) Regulations, 1941, dated 29th September, 1941 (S.R. & O., No. 1514). The object of the Order is principally to extend the definition of "householder" for the purposes of reg. 1 of the War Damage to Goods (General) Regultions, 1941. That regulation empowers the Board of Trade to make certain payments (*a*) to a householder; (*b*) to any person not under sixteen years of age and not being the wife of a householder ordinarily resident with him, in respect of war damage occurring at any time after 30th April, 1941, to goods which, when the damage occurred, were insurable in relation to him under the private chattels scheme otherwise than as being owned by, or in the possession of, a domestic servant of his. It may be recalled that para. 8 (*a*) of the regulation provides that where a person has been a householder at any time since 1st August, 1939, but has since ceased to be a householder for reasons which the Board of Trade are satisfied are attributable to the war, he shall be treated as having continued to be a householder. The new order provides that where the Board of Trade are satisfied that, apart from this paragraph (10A), any person would be or be treated as a householder for the purposes of reg. 1 of the War Damage to Goods (General) Regulations, 1941, but for circumstances attributable to the war, they may treat that person as a householder for the purposes of that regulation. The new order further provides that where a person is treated as a householder for these purposes by virtue only of this new provision, the Board may treat him as being ordinarily resident with any other person if satisfied that he would have been so resident but for circumstances attributable to the war. The order also provides for the insertion at the end of reg. 5 of the earlier order excluding risks insurable under Pt. I of the War Risks Insurance Act, 1939, of a proviso that that regulation should not apply to loss or damage to goods in transit on a journey starting at a place in the United Kingdom and ending at any other such place by a route which does not involve calling at any place outside the United Kingdom.

War Damage to War Factories.

THE War Damage Commission recently issued a statement for the guidance of the occupiers of factories engaged in war work when the factories suffer war damage. The Commission and the Government Departments concerned, it is said, have considered the question of securing that while the national effort in the matter of war-time production shall not be delayed or impeded, the public interest in relation to future replanning of a war-damaged area shall also be taken into account. Under s. 7 of the War Damage Act the Commission is empowered, in the public interest in relation to town and country planning, to specify classes of work, other than temporary work, which may not be carried out without previous submission of the proposal to the Commission. Payment of compensation may be withheld if such work is carried out without the prior consent of the Commission. A number of areas have already been scheduled in which this obligation applies to work which will ultimately cost more than £1,000 or ten times the net annual value of the hereditament, whichever is the less. Readers will remember that the areas scheduled under s. 7 were specified in our issues of 6th Sept. and 11th Oct. (*ante*, pp. 361, 400). The occupiers of factories engaged on war work which suffer war damage usually apply to the Local Reconstruction Panels of the Emergency Services Organisation of the Ministry of Aircraft Production (which body serves also the Ministry of Supply and the Admiralty) for assistance in the repair of their buildings. It has been arranged that the Panel, when approached by the occupier of a damaged factory, will at the same time assume responsibility for consultation, on behalf of the Commission, with the planning authority. Where authority for the work to proceed is given by the Panel, work can at once proceed in the knowledge that the Commission will not impose any further conditions. It will, however, be the duty of the occupier of the factory as soon as possible to produce to the Commission written evidence furnished by the Panel that the planning authority has consented to the execution of the works. Where other Government Departments are interested in the immediate repair of a building essential to the war effort the local representative of the department concerned will assume a similar responsibility for consultation with the planning authority.

Costs and the Coal (Registration of Ownership) Act, 1937.

IN a memorandum recently submitted by the Registrar of the Coal Commission to the Council of The Law Society, the Registrar deals with bills of costs under the Coal (Registration of Ownership) Act, 1937, the whole or part of the amount of which are recoverable from the Coal Commission. The August issue of *The Law Society's Gazette* sets out the memorandum in full, together with the views of the Council on the subject. The Registrar states that the scale of "costs reasonably incurred" is laid down in Sched. II of the General Order (as amended) made under the Solicitors Remuneration Act, 1881. There is a difference between solicitor and client costs, which the Commission is prepared to pay, and solicitor and own client costs. The Taxing Master had said in a recent taxation that he had taxed the bill on the most liberal scale short of solicitor and own client, and he could not tax on the latter basis without modification. The Council's reply is that they are aware of this tendency of taxing masters to take the view that the Act has created a special kind of taxation. Although the Council had suggested in the April issue of the *Gazette* that the one-sixth rule should apply, on further consideration they felt that the rule only applied to taxations under s. 66 of the Solicitors Act, 1932, to certain taxations under s. 67 of that Act and to taxations to which reg. 38B of R.S.C., Ord. 65, r. 27, applied, and did not extend to taxations under the Coal (Registration of Ownership) Act as between the coalowner and the Coal Commission. On this point no decision of a judge had been obtained, but an early opportunity would be taken to obtain the ruling of the court upon it. In taxations which have so far taken place under the Coal (Registration of Ownership) Act the Order has included a direction that the one-sixth rule is to apply. The Council are informed by the Coal Commission that the penalty under the rule has not yet been inflicted by reason only of the inclusion of the solicitor's bill of costs and the subsequent reduction on taxation, of the charges of the mining engineer or mining agent, but this may occur on future taxations. The Council's view is that such charges should not be included in disbursements in the bill if taxations are not to be on a solicitor and own client basis. This question, as the Commission points out, is one of great difficulty, for where the same work is charged for both by the solicitor and the mining agent it is impossible for the Commission to assess the amount payable to each. All the Commission can do in such cases is to indicate the sum which they are prepared to pay in respect of the total claim made, leaving it to the solicitors and mining agents to adjust the matter among themselves. With regard to the further notes in the memorandum on detailed points, the Council express the view that the memorandum can only be taken as a general guide and would only apply to small cases; for example, the item ten shillings for instructions would obviously be totally inadequate in a large matter. It is interesting to note that the Commission anticipates that altogether some 27,000 holdings will be registered, and that, in fact, up to 30th May, 1941, there have been 26,165 registrations.

Recent Decisions.

IN *Earl Fitzwilliam's Collieries, Ltd.* v. *Philips* (*Inspector of Taxes*) on 13th October (*The Times*, 14th October), LAWRENCE, J., held that where a lease of coal mining rights provided for a certain yearly rent of £5,000 in respect of one seam and various sums in respect of others, and also, among certain "acreage or footage rents" certain sums per acre in respect of those seams worked during the preceding half-year "as liquidated damages in respect of the overlying surface," the lease granted an easement within s. 21 of the Finance Act, 1934, and the payments in question were rents within that section and were therefore not deductible from the profits of the company paying them.

In *Allchin* (*Inspector of Taxes*) v. *County Borough of South Shields* on 13th October (p. 420 of this issue), LAWRENCE, J., held that on the construction of the South Shields Corporation Act, 1935, ss. 112 to 114, the corporation was not permitted to use the profits from certain of its undertakings in payment of interest due on its bond in respect of another of its undertakings the revenue from which was insufficient to pay that interest, and that therefore it could not be deemed to have paid the interest primarily out of taxed income.

In *Black* v. *Mileham* on 14th October (*The Times*, 15th October), the Court of Appeal (MACKINNON, CLAUSON and LUXMOORE, L.JJ.) held that a letter by a tenant of premises damaged by enemy action to his landlord, returning the keys, stating that the premises were uninhabitable as from a certain date and that he had not been in occupation since that date, was a valid notice of disclaimer of his lease under s. 4 of the Landlord and Tenant (War Damage) Act, 1939, as s. 20 only required the document to be in writing and no formality or scheme of words was required.

Criminal Law and Practice.

Provocation as a Defence in Murder Charges.

THE importance of the recent appeal of Mancini to the House of Lords (*The Times*, 16th October, 1941), of which at present only an abbreviated newspaper report is available, appears to be twofold. In the first place, it applies the law as to provocation in murder cases to a particular set of facts and provides some detailed guidance on its application to other facts. Secondly, it re-asserts and re-formulates the propositions already asserted by the House in *R.* v. *Woolmington* [1935] A.C. 482.

The short facts were that Mancini was manager of a club and a member of a club on the floor above his own club. At 3 a.m. on 1st May, after a disturbance in the club upstairs, Mancini went up to see the damage. While on the stairs he heard the voice of a man whom he had barred from his club, saying: "Here's Baby (Mancini): let's knife him." That man later came into the upstairs club with the deceased and during a renewal of the disturbance, in which billiard cues, balls and chairs were used as weapons, Mancini was attacked by the deceased, and striking out blindly with a dagger which he drew from his pocket he wounded the deceased, causing his death. He said that he had not aimed at any particular person, and alleged that he had acted in necessary self-defence.

The Lord Chancellor pointed out that although the prisoner would have been entitled to an acquittal if the jury had accepted his defence, it was undoubtedly the duty of the judge, in summing up, to deal adequately with any other view of the facts which might reasonably arise out of the evidence given, and which would reduce the crime from murder to manslaughter. The judge was not relieved from that duty by the fact that counsel for the defence did not stress an alternative case, which he might well feel it difficult to do without prejudicing the main defence.

In support of this last proposition, his lordship cited *R.* v. *Hopper* [1915] 2 K.B. 431. That was a case of shooting with a rifle after a quarrel between soldiers. At the trial the main defence set up was that of accident, but the alternative defence of provocation reducing the offence to manslaughter was not abandoned. In his summing-up the learned judge told the jury that there was no evidence of provocation, and unless they found that the shooting was an accident they must find a verdict of murder. Lord Reading, C.J., in the Court of Criminal Appeal said that there was some evidence of provocation and the question of manslaughter should have been left to the jury. The verdict and sentence were quashed and a verdict of manslaughter and a sentence of four years' penal servitude was substituted.

Generally, on the question of what provocation would reduce the crime of murder to manslaughter, his lordship said that it must be such as temporarily deprived the person provoked of his self-control as the result of which he committed the unlawful act which caused death. The test was the effect of provocation on a reasonable man. His lordship cited *R.* v. *Lesbini* [1914] 3 K.B. 1116, a case in which a hot-tempered man had shot a girl attendant at a rifle range, after an imagined insult. It was held that he was not entitled to say that he was provoked by something which would not have provoked a reasonable man to act as he did.

In applying the test, his lordship said, it was particularly important to consider whether (1) a sufficient interval had elapsed since the provocation to allow a reasonable man time to cool, and (2) to take into account the instrument with which the homicide was effected, for to retort, in the heat of passion induced by provocation, by a simple blow, was a very different thing from making use of a deadly instrument like a concealed dagger. The mode of resentment, he said, must bear a reasonable relationship to the provocation, if the offence was to be reduced to manslaughter. In his lordship's opinion, there was not sufficient evidence of such provocation as to justify the use of the dagger so as to reduce the verdict to manslaughter.

The Lord Chancellor, at the invitation of the Attorney-General, laid down that *Woolmington's Case* [1935] A.C. 462, was concerned with explaining and reinforcing the rule that the prosecution must prove the charge beyond reasonable doubt, the only exception to the rule of the onus of proof being in the case of the defence of insanity and also where the onus of proof is shifted by statute.

He then said that if the evidence before the jury at the end of the case did not contain material on which a reasonable man could find a verdict of manslaughter instead of murder, it was no defect in the summing-up that manslaughter was not dealt with.

Finally, he said that in *Woolmington's Case* the sentence at p. 482 of [1935] A.C. ending: "the prisoner is entitled to be acquitted" should, of course, be understood to mean: "the prisoner is entitled to the benefit of the doubt," as the verdict should be "Not guilty" if the jury were left in any reasonable doubt on the question of accident or provocation. The appeal was dismissed.

One of the most interesting questions which emerge from this appeal is that relating to the interval during which a person's temper may cool down so as to convert what would otherwise be a provoked act of manslaughter into cold-blooded murder. It may be recalled that Parke, B., said in *R.* v. *Fisher*, 8 C. & P. 182, that in a case of killing, whether the blood has had time to cool or not, is a question for the court, and not for the jury, but it is a question for the jury to find what length of time elapsed between the provocation received and the act done.

It is curious that this should be considered to be a question of law, having regard to the great variety of circumstances in which provocation may occur, but cases in which it has been held that mere suspicion of adultery is not sufficient provocation to wife murder, however strong the suspicion, show the importance of paying regard to previous decisions on the subject. Nothing short of actual ocular vision of adultery will, in law, justify wife murder so as to reduce the verdict to manslaughter (*R.* v. *Kelly*, 2 Car. & Kir. 814, and see article 83 SOL. J., 4).

When a fuller report of all the judgments is available we hope to return to this case.

A Conveyancer's Diary.

The Courts (Emergency Powers) Act and Mortgages.

IT is now some considerable time since I last discussed the Courts (Emergency Powers) Acts in this column, and as some of the decisions on it seem somewhat surprising, it may be proper to refer to a few of them.

First, however, it is desirable to sketch the structure of the Act of 1939 (that of 1940 is not relevant to the present discussion). Section 1 (1) provides that, with certain exceptions, judgments for the payment or recovery of a sum of money are not to be executed without the leave of the court. Section 1 (2) says (again with exceptions) that "a person shall not be entitled," save with the leave of the court, "to proceed to exercise any remedy which is available to him by way of" various things, one of which is the "appointment of a receiver of any property" and another is "the realisation of any security." Section 1 (3) makes similar provision about the execution of judgments for possession based on default in payment of rent. Section 1 (4) lays down that where leave is sought under any of the preceding subsections the leave may be refused, or granted only conditionally, in cases where the court thinks that "the person liable to satisfy the judgment or order, to pay the rent or other debt, or to perform the obligation in question" is unable to do so because of the war.

Quite early, namely, in January, 1940, an attempt was made to find a way round the Act so far as the appointment of a receiver is concerned. In *Gasson and Hallagan, Ltd.* v. *Jell* [1940] Ch. 248, there was a mortgage the interest on which was in arrear. The mortgagees issued an originating summons asking for an account and payment of the amount found due and for a receiver; they then launched a motion asking for a receiver. The idea obviously was that such an appointment would not require leave; it would not be an appointment by the mortgagee, such as is struck at by s. 1 (2), and by its interim nature would not be "execution" within s. 1 (1) as there would not be any judgment to execute. Farwell, J., declined to countenance this ingenious device and said that the case was not one in which the court would exercise its discretionary powers to appoint a receiver. He therefore dismissed the motion. He also refused leave to amend the proceedings by adding a prayer for foreclosure, as foreclosure proceedings cannot be started without leave obtained on a separate originating summons. This case, therefore, establishes that the court does not look with favour at endeavours, however astute, to escape the Act in cases where it applies.

On the other hand, two later cases have shown that the court does not feel it necessary to stretch the Act to cover cases to which on its literal wording it does not apply. Those cases deal with the peculiar position of a mortgage given by A as collateral for a loan by the mortgagee to B. The same reasoning would, however, clearly extend to the case of any mortgage which is only a charge of the property and is not coupled with a personal obligation between the mortgagor and mortgagee. Such, for example, would usually be the position of a mortgage created by a fiduciary owner. The two cases are *National Provincial Bank, Ltd.* v. *Liddiard* [1941] Ch. 158, and *Re Midland Bank's Application* [1941] Ch. 350. In the *Liddiard Case* the mortgage was one by Mr. Liddiard to secure the repayment of a loan by the bank to Mr. Liddiard's daughter. He did not covenant to repay the debt. The summons was taken out by the bank against him for leave,

if necessary, to enforce the security. The daughter was not a party. It was dismissed by Farwell, J., without costs, on the ground that the respondent was not a person who fell within s. 1 (4) at all. He was not liable to perform any obligation. He had not covenanted. All that had happened was that he had brought about a state of affairs in which, if his daughter did not pay the debt, he had a choice between paying it himself and having his property taken away. But he was not "liable to perform" any "obligation," as the bank could never obtain a judgment against him for the debt. Farwell, J., whose mind was clearly directed to the position as between the parties to the proceedings before him, held that between those parties no leave to enforce the security was necessary, and that therefore he was bound to dismiss the application in which such leave was sought. He was very careful to say that he was expressing no view whatever (see p. 164) on the question whether, as against the daughter, the mortgagees ought to have obtained any leave. He confined his decision to dismissing the proceedings as against Mr. Liddiard "on the ground that no leave is necessary because the case is not one which is provided for by the Act." The decision was, no doubt, correct, and was upheld in the *Midland Bank Case;* but, as that case shows, the greatest care must be taken to refrain from reading into the earlier case ideas for which it is not authority. It is to be observed that Farwell, J., in his judgment directed himself to s. 1 (1) and s. 1 (4) of the Act, and did not deal with s. 1 (2). He thus decided that no leave was necessary in the Liddiard proceedings, as Mr. Liddiard was not within s. 1 (4). He did not decide that no leave was necessary at all. In the *Midland Bank Case* the master had given leave to the bank to exercise such remedies as it might have in respect of a mortgage by A to secure a loan made by the bank to the B Company. A filed evidence showing that the B Company's business had been ruined by the war. The mortgagor then started a motion asking the court to reverse the master's order. In a reserved judgment, Morton, J., said that there was nothing in a point made by the applicants' counsel to the effect that the mortgagor was under a personal liability limited to the value of the security. He then said (p. 355) that the case was indistinguishable from *Liddiard's Case*, and that it was clear that s. 1 (4) gave no protection to the mortgagor. He then read, with approval, a considerable portion of the earlier judgment of Farwell, J., but went on to point out that Farwell, J.'s, mind had not been directed to s. 1 (2) and that he had only been considering the position of Mr. Liddiard, the case having been discussed on the footing that if he was not within s. 1 (4) no leave was necessary. Morton, J., then said that he had no doubt that *qua* s. 1 (2) leave was necessary. He further said that he had wondered whether relief might be given on the footing that there was evidence that primary debtor had been ruined by the war, but that he was satisfied that no one but a person coming within s. 1 (4) was qualified to obtain relief. He added that this appeared to be a *casus omissus* and was one which might work hardship, but that as this mortgagor had seen fit to launch a motion instead of merely asking for an adjournment to the judge, he must pay the costs of the motion.

The position, then, is this, and it is a very strange one. Leave is necessary under s. 1 (2) for the realisation of any security. Such leave will be granted as of course, save to a person coming within s. 1 (4). Leave will not be granted if the respondent is liable to perform the obligation but is suffering from the war. Leave will be granted even if the respondent is suffering from the war if he is not contractually bound to pay the mortgage debt; it will also be granted as against such a person even if the primary debtor has been ruined. Thus a mortgagee is in a far more favourable position to enforce a collateral security than a primary one.

Parliamentary News.

Progress of Bills.

House of Lords.

Agriculture (Miscellaneous Provisions) Bill [H.C.].
No Committee. [21st October.

Local Elections and Register of Electors (Temporary Provisions) (No. 2) Bill [H.C.].
Reported without Amendment. [21st October.

Prolongation of Parliament Bill [H.C.].
Reported without Amendment. [21st October.

Solicitors Bill [H.L.].
Commons Amendments agreed to. [15th October.

House of Commons.

Marriage (Members of H.M. Forces) Bill [H.L.].
Read Third Time. [21st October.

Landlord and Tenant Notebook.

The New Forms of Statutory Protection.

II.—Liabilities (War-Time Adjustment) Act, 1941.

In my previous article (85 Sol. J. 409) I discussed the nature of the interest enjoyed by a "tenant" protected by the refusal, absolute or conditional, of leave under the Courts (Emergency Powers) Act, 1939; comparing his position with that of a tenant enjoying the protection of the Rent and Mortgage Interest (Restrictions) Acts by reference to those Acts and to a number of established propositions concerning such position. In this week's "Notebook" I propose to examine in the same way the nature of the protection which may be conferred by the Liabilities (War-Time Adjustment) Act, 1941.

The new statute is capable of affecting the relationship of landlord and tenant in various ways. An "approved scheme of arrangement"—its ideal—"may, with the assent of the other parties thereto, vary the terms of any lease . . . to which the debtor is a party (s. 1 (3)). However, we are not for the moment concerned with the ideal, and I pass to the effect of a "protection order" which may be made, on a *prima facie* case being shown, under s. 3. By subs. (2), "while any such order is in force, (*a*) any proceedings against the debtor . . . for the recovery of possession of land . . . shall be stayed, and shall not be further prosecuted except with the leave of the court and subject to such restrictions as it thinks fit . . . (*b*) . . . no proceedings for the recovery of possession of land . . . being land in the debtor's possession at the date of the order, shall be commenced, and no remedy by way of re-entry upon any such land . . . shall be exercised against the debtor, except with the leave of the court and subject to such restrictions and conditions as it thinks fit."

A liabilities adjustment order, which will normally follow the making of a protection order without necessarily superseding it, may contain rather more matter. It is to provide, by s. 4 (1), for the payment of debts proved in full or to such extent as the court considers practicable, and may for that purpose provide for the realisation of his property; but by subs. (3) (*c*) it may provide "in a case where the debtor carries on a business or intends, when circumstances permit, to resume the carrying on of a business suspended owing to war circumstances (i) for excepting from the property to be realised, any premises used for the business, and such property as in the opinion of the court is required for the purposes of the business . . . so, however, that in exercising the powers aforesaid the court shall have regard to the prospects of the business and the likelihood of ultimate benefit to the creditors as well as the debtor; while para. (*d*) confers power to postpone realisation in the case of temporary depreciation. Section 5 permits of disclaimer; but it is s. 6 (1) which first specifically mentions holding over: "Where at the date of the protection order the debtor is in possession of any premises held on a lease or tenancy, or is holding over any premises, after the determination of a lease or tenancy, by virtue of the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, or the Courts (Emergency Powers) Acts, 1939 to 1940, and the court proposes to exercise its powers so as to allow the debtor to retain possession of the premises, the court may in the liabilities adjustment order provide that the rent shall, during the period for which the order is in force, or for any less period, be reduced to such amount as the court thinks fit, which may, in the case of a dwelling-house to which the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, apply, be less than the rent permitted under those Acts: Provided that the rent shall not in any case be reduced unless, in the opinion of the court, the lettable value of the premises has fallen as the result of war circumstances, or to an amount less than the lettable value at the date of the liabilities adjustment order."

Next, s. 8 (1) may be considered. "Where the court exercises its powers so as to allow the debtor to remain in possession of any property, or postpones the realisation of any property, it shall make provision in the liabilities adjustment order for securing the payment of any sums payable by the debtor in respect of the property after the date of the protection order, subject to any variation of any lease, contract or mortgage affecting the property made by or under this Part of this Act, and in particular for securing (*a*) the payment of rates . . ."

I have mentioned some of the provisions of ss. 4, 5, 6 and 8 for the sake of completeness; but they do not actually confer any rights to hold over analogous to those enjoyed by a Rent Act statutory tenant. The power to order and postpone realisation of property, and to except property used for the debtor's business may affect leasehold property; but there is nothing to suggest that "property" could include the interest

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* = Bankruptcy Court.
† = Admiralty Court.
(R.) = Registrar.
(J.S.) = Judgment Summonses.
(B.) = Bankruptcy.
(R.B.) = Registrar in Bankruptcy.
(Add.) = Additional Judge.
(A.) = Admiralty.

of a tenant whose lease has come to an end and who may be allowed to retain possession under a protection order. Nor would " lease " in s. 5 include such an interest. The reduction of rent provision in s. 6 is expressly limited to cases in which a protection order has been made under the Act or possession is enjoyed by virtue of the Rent Acts or the Courts (Emergency Powers) Acts. And the direction to secure payment of rent in s. 8—subject to any variation of any lease—would not extend to payments made after term expired.

The position when an order made under the Courts (Emergency Powers) Act, 1939, prevents a landlord from resuming possession was discussed in the previous article, and I now propose to examine, by reference to the four propositions established in the case of Rent Act statutory tenants, the nature of the status created by a protection order under the Liabilities (War-Time Adjustment) Act, 1941.

The first concerned the " tenant's " right to enforce a lessor's covenant to repair by an action for damages, established in the case of Rent Act statutory tenants by *Hewitt* v. *Rowlands* (1924), 93 L.J.K.B. 1080 (C.A.). All I will venture to say about this is that the position is less clear than it may be in the case of an order under the Courts (Emergency Powers) Act, 1939, which order may itself make provision for the eventualities ; in fact, it is less clear than was the position of a tenant protected by the Rent Acts before s. 15 (1) was enacted for the purpose of defining his status. For while the Liabilities (War-Time Adjustment) Act protection order may, by s. 3 (*d*), give directions as to management of property, charge property, vest property in trustees, require the debtor to pay money into court, etc., as regards the relationship of landlord and tenant its effect is limited to restricting the exercise of remedies for possession. So the question whether the protected tenant could effectively complain of disrepair is one which cannot readily be answered ; and the same applies to a third party who might be injured owing to such disrepair in circumstances which would ordinarily give him a right to redress against the covenanting landlord.

The second proposition was that a Rent Act statutory tenant might be entitled to exercise an option for a new lease, i.e., if the clause conferring the option were so worded as to provide for its exercise as long as the tenant retained possession (*McIlroy (William), Ltd.* v. *Clements* (1923), 155 L.T. Jo. 362 (C.A.)). A protection order could, I submit, have this effect, and the court would provide for this right to be exercised, if at all, for the benefit of creditors.

Then came the question of alienation and the kindred question of possession as a condition of protection. Dealing with the latter first, while the Rent Act statutory tenant forfeits his rights if he ceases personally to occupy the controlled premises, under the Courts (Emergency Powers) Act, 1939, the tenant need not ever have had possession. And there is no reason why a tenant should have or remain in possession in order to qualify for a protection order under the Liabilities (War-Time Adjustment) Act, 1941. True, a liabilities adjustment order, as we have seen, may make special provision for premises used for the business (s. 4 (3) (*c*) (i)), but this also applies to " other property . . . required for the purposes of the business " ; and the protection order provisions impose no limitations and contain no indications of this kind. But when it comes to sub-letting or assigning, the essential object of the legislation must be borne in mind, and it is submitted that the debtor has no interest capable of voluntary or involuntary assignment and no power to sub-let. The landlord's hand is stayed with a view to the debtor's " serious financial difficulties " (s. 1 (1)) being alleviated by an " equitable and reasonable scheme of arrangement." If the submission just made is wrong, the effect would be that the debtor's rights under the protection order are " property " (as the Rent Act statutory tenant's interest was originally held to be (*Parkinson* v. *Noel* [1923] 1 K.B. 117, being the bankruptcy case), and in that case the directions for management (s. 3 (3)) could give a receiver and manager a say in the matter.

The fourth proposition I discussed as regards applicability to the tenant's position in the case of Courts (Emergency Powers) Act, 1939, orders was whether L.T.A., 1730, s. 1 (double rent recoverable), could be invoked by the landlord. In a case of a Rent Act statutory tenancy, *Crook* v. *Whitbread* (1919), 88 L.J.K.B. 959, the gallant attempt failed, for the simple reason that the holding over was not " wilful " within the recognised meaning of that word, and this reasoning would apply with equal force to a tenant protected by a Liabilities (War-Time Adjustment) Act protection order.

Lastly, can a landlord entitled by the lease to forfeit the term take proceedings to enforce his right without giving the statutory notice required by L.P.A., 1925, s. 146 ? In *Brewers* v. *Jacobs* [1923] 1 K.B. 528, notice was held to be unnecessary in the case of a Rent Act tenant, because there was no lease. The position would be the same in the case of a protection order when the landlord is thereby restrained from re-entering after a term has expired naturally, but might be more intriguing when, say, he is originally so restrained after non-payment of rent has made exposed the term to forfeiture, and then, during the currency of the protection order, disrepair provides an additional cause. But the answer is, that in the one case s. 3 (2) (*a*) (" any proceedings . . . shall be stayed ") and in the other, *ib.* (*c*) (" no proceedings shall be commenced, and no remedy shall be exercised . . . ") governs the position, and the fact that the premises were suffering through failure to repair would merely be an additional reason for removing the ban on the proceedings based on rent default, without insisting on an L.P.A. notice to remedy the disrepair.

Our County Court Letter.

The Quality of Roofs.

In a recent case at Birmingham County Court (*F. T. Matthews, Ltd.* v. *Packham*) the claim was for £5 10s. as the balance due on the sale of a house. The counter-claim was for £17 as damages for breach of contract. The claim was admitted, but the case for the defendant on the counter-claim was that in April, 1937, he had approached the plaintiffs' managing director with regard to the purchase of a house. Having stipulated that there should be cavity walls, and that the roof should be torched, the defendant bought the house in reliance on the managing director's assurance that the above two requirements would be fulfilled. Completion took place in December, 1937, but in January, 1938, trouble arose through snow driving in under the tiles. It was found that the roof had not in fact been torched, and the defendant withheld payment of the outstanding balance, and wrote letters of complaint in 1938. Corroborative evidence of the promise to torch the roof was given by the defendant's wife and father. It was also pointed out that the plaintiffs' brochure, although admittedly not forming the basis of any contract, did in fact state that " all roofs will be torched." The defence to the counter-claim was that it was improbable that the managing director had promised to torch the roof, as the latter consisted of " Marley " tiles. The manufacturers did not recommend torching, which tended to set up capillary attraction and would cause dry rot eventually. In an exposed position, the manufacturers recommended the use of their untearable felt, but this was unnecessary in a house in a sheltered position, like the defendant's. Moreover, the counter-claim was stale, and would not have been made if the plaintiffs, in response to their auditors' requirements, had not sued for the small balance due from the defendant. His Honour Judge Dale held that, in view of the prompt complaints of the defendant in 1938, his counter-claim was genuine. The question whether torching was necessary or advisable, when the particular type of tile was used, was not the real issue. The defendant had been promised that the roof should be torched, and, in view of the omission of this process, there had been a breach of contract. Judgment was given for the plaintiffs on the claim, without costs, and for the defendant on the counter-claim for £11, with costs on Scale A.

The Remuneration of Dentists.

In *Trainin* v. *Hobson*, recently heard at Westminster County Court, the claim was for £22 1s. as the balance of a fee of 115 guineas for dental treatment. The plaintiff's case was that the treatment included a four-tooth fixed bridge and a gold and porcelain crown tooth. Fifteen consultations were necessitated, and special work entitled the plaintiff to higher fees. The defendant admitted that he had spent fifteen hours with the plaintiff, who was entitled to high fees, viz., three guineas per hour. On that basis the defendant admitted liability for forty-five guineas, but he contended that another fifteen guineas would be reasonable for the material. His Honour Judge Austin Jones observed that no quotation was given for the special work, and the plaintiff had already been paid more than twice his hourly fees. Judgment was given for the defendant, with costs.

Obituary.

Sir ROBERT DUMMETT.

Sir Robert Ernest Dummett, Metropolitan Police Magistrate, died on Saturday, 18th October, aged sixty-nine. Sir Robert was called to the Bar by Gray's Inn in 1895, and joined the Western Circuit. In 1925 he was appointed a Metropolitan Police Magistrate, and sat at Clerkenwell and later Marlborough Street and Bow Street. In 1940 he was appointed Chief Magistrate and received the honour of knighthood.

To-day and Yesterday.

LEGAL CALENDAR.

20 October.—One day in July, 1755, the press gang broke into the house of Mr. William Godfrey, a citizen and cooper of London, and "a man of known substance and credit," dragged him to a tender in the Thames and quite illegally kept him twelve hours in a suffocating hold "in derogation of the rights and privileges of the citizens of London." On the 25th October at the Guildhall Sessions five of the sailors came up for judgment publicly acknowledging their offence on their knees. They were let off with ten days' imprisonment because they had acted under an officer's orders and also because their services were needed against the French. The midshipman in command of them had already been sentenced to a year's imprisonment.

21 October.—When the Old Bailey Sessions ended on the 21st October, 1780, there were eight persons to sentence to death. These were a postman who had stolen a letter containing a bill of exchange for £30, two horse stealers, two wild women who had robbed a man in a house, stabbing him in the face and threatening to dig his eyes out, a man who had stolen £27 worth of linen in a dwelling-house, another who had stolen some clothes, and a woman who had stolen a pair of buckles, a diamond ring, a metal watch and some clothes from a house in Bloomsbury. The postman, the linen stealer and one of the wild women were actually executed.

22 October.—George Price was a Welshman who came to London and married the servant at a Hampstead public-house a fortnight after meeting her. After this impulsive act he found her an obstacle to other love affairs and decided to kill her. On the pretext of having found her a place as a nurse-maid at Putney, he drove her in a chaise to Hounslow one night and there strangled her with the thong of the whip. Afterwards he stripped and disfigured the body, leaving it beneath the gallows where the criminals hung in chains. Yet he was not born to be hanged, though he was silly enough to return some clothes which his wife had borrowed. He told his fellow servants, in the house where he worked, a false story to account for his movements, but, frightened by their enquiries, he fled to Portsmouth. In an alehouse there he heard the crier calling an exact description of him as a murderer and jumped into the sea through a window. He made for Oxford, but saw himself advertised for in a newspaper and sought shelter for a while with his people in Wales. Later he went to Gloucester as an ostler, but was recognised there, and, though his fellow servants did not betray him, he finally decided to give himself up. He was condemned to death at the Old Bailey, but died of gaol fever in Newgate on the 22nd October, 1738.

23 October.—On the 23rd October, 1660, Pepys wrote: "I met the Lord Chancellor and all the Judges riding on horseback and going to Westminster Hall, it being the first day of the term, which was the first time I even saw any such solemnity."

24 October.—On the 24th October, 1892, the judges walked in procession through the courts, Lord Herschell, newly appointed Chancellor, leading them, and he was greeted with warm applause. THE SOLICITORS' JOURNAL noted the appearance of a Mysterious Stranger. "Robed and bewigged as a judge there walked up the hall a figure, lacking indeed the pistols and dagger characteristic of the bloodthirsty pirate at the Surrey Theatre, but as regards hirsute adornments of countenance very well made up for that character. Could this be the new judge? Where had he practised? Possibly in the colonies—no doubt in the remote bush of Australia, where you have to ride 100 miles to a barber . . . Painstaking investigations, however, ultimately resulted in the discovery above the moustaches and beard of a portion of the features of a highly esteemed judge who, it appeared, had devoted the opportunity for seclusion afforded by the Long Vacation to cultivating the disguise which so effectually concealed him from his admirers." One wonders now which judge it was.

25 October.—The annual service at Westminster Abbey which in peace-time marked the beginning of the legal year was a relatively modern institution. The first was held on the 25th October, 1897. With the co-operation of Lord Halsbury, the Lord Chancellor, and the sanction of the Dean of Westminster, it was arranged that the Bench and Bar should attend it before the reception in the House of Lords. The idea originally came from the Bar led by the Attorney-General, the future Lord Alverstone. On this occasion the solicitors were somewhat hurt at not being invited.

26 October.—In the previous year the procession of judges and counsel at the Law Courts on the 26th October, 1896, had not been a great success; at any rate, it had disappointed the correspondent of THE SOLICITORS' JOURNAL, who noted the absence of several Queen's Bench judges, and added: "Someone suggested that they had stayed away because there was not enough scarlet to go round. The two Law Officers failed to put in appearance, but there was the usual shivering multitude of 'silks' in silk stockings. The junior Bar was, of course, present in force. There was very little applause, perhaps because no new judge has been made.

"RESTRICTING THE MOVEMENT OF BEES."

The Agriculture (Miscellaneous Provisions) Bill contains in one of its sections words empowering the Minister to provide for "prohibiting or restricting the movement of bees." Gilbert's Lord Chancellor repudiated the title of "Chancellor of Birds and Beasts, King of the Winds and Prince of Thunderclouds," but no doubt the proper department will be equal to the execution of its powers. After all, on the Continent the lower animals were long regarded as amenable to the laws and liable to be summoned before judicial tribunals. (I think it was in 1740 that the last trial of an animal took place.) The root of the idea probably lay in Exodus xxii, 23: "If an ox gore a man or a woman that they die, then the ox shall be surely stoned and his flesh shall not be eaten but the owner of the ox shall be quit." But mediæval jurisprudence went much further than that. An action brought by the Commune of St. Julien against certain insects, a sort of greenish weevil, which were ravaging the vineyards lasted from 1445 to 1487. In another case heard at Lausanne in 1451 the defendants were leeches, which finally incurred the extreme penalty of exorcism. The learned debated much because this was worded in an unusual form, but the doctors of Heidelburg University triumphantly upheld it on the ground of its efficacy, for thereafter the leeches had languished and died. In one famous case at Autun the rats of the diocese were charged with having feloniously eaten up the barley crop. Chassenée, who subsequently achieved fame as one of the great French jurists of the sixteenth century in France, was assigned to them as counsel. First he pleaded that a single publication of the summons was not sufficient in a case where the defendants were widely dispersed. Accordingly, the court ordered it to be published in every parish. As the rats still entered no appearance, he pleaded that the summons implied full protection by the court for the parties and declared that his clients were only deterred from obeying by the evilly disposed cats kept by the plaintiffs, who, he argued, should give security in heavy penalties that their cats would not molest the defendants. The court upheld this contention, but as the plaintiffs were not willing to give security the case was adjourned *sine die*. To return to the bees, in 864 the Council of Worms decreed that bees which had stung a man to death should be forthwith suffocated in the hive.

Books Received.

The E.P.T. Liability of Interconnected Companies. By JAMES D. HEATON, Incorporated Accountant (Hons.). 1941. Demy 8vo. pp. 170 (including Index). London: Jordan and Sons, Ltd. Price 18/- net.

Encyclopaedia of War Damage and Compensation. Edited by JOHN BURKE, Barrister-at-Law. Supplemental Part No. 2. London: Hamish Hamilton (Law Books), Ltd.

Notes and News.

Honours and Appointments.

The King has directed that Sir MADHAVAN NAIR, formerly a Puisne Judge of the High Court of Madras, be sworn of the Privy Council and be appointed a member of the Judicial Committee of the Privy Council under the Appellate Jurisdiction Act, 1939, in place of Mr. M. R. Jayakar, who has resigned his appointment.

The Lord Chancellor has appointed Mr. RICHARD WEDD, Registrar of the Coventry County Court to be the Registrar of Banbury, Chipping Norton and Shipston-on-Stour County Courts in addition, as from the 1st October.

The Board of Trade have appointed Mr. A. D. SCOTT to be Assistant Registrar of Companies in place of Mr. F. W. Boustred, retired. Mr. Scott succeeds Mr. Boustred as Assistant Registrar of Business Names.

LAW ASSOCIATION.

The usual monthly meeting of the directors was held on the 6th October, Mr. John Venning in the chair. The other directors present were Mr. E. Evelyn Barron, Mr. Guy H. Cholmeley, Mr. Colin A. Dawson, Mr. Douglas T. Garrett, Mr. G. D. Hugh Jones, Mr. C. D. Medley, Mr. Frank S. Pritchard, Mr. William Winterbotham, and the Secretary, Mr. Andrew H. Morton. The sum of £283 5s. was voted in relief of deserving applicants and other general business was transacted.

Notes of Cases.

CHANCERY DIVISION.

Re Brunner's Declaration of Trust; Coghill *v.* President and Council of Cheltenham College.

Simonds, J. 14th May, 1941.

Trust deed—Construction—Trust to apply income "in perpetuity" for charitable purpose—Power to vary trusts—Whether power authorises expenditure of capital.

Adjourned summons.

By a deed dated the 27th September, 1917, trusts were declared of certain funds vested in trustees for the assistance of Cheltenham College. Clause 3 of the deed provided that the trustees might acquire by donation or otherwise any property and they might "apply the income thereof in perpetuity for or towards all or any of the purposes" thereinafter mentioned for the benefit of the school and the promotion of its interests. Clause 5 provided that no property vested in the trustees should ever be expended but the income only applied. Clause 19 declared that it should be lawful for the trustees at any time to revoke the provisions of the deed other than the provisions of cl. 3. This power was only to be exercised in pursuance of a resolution passed by the Cheltenham Society. Owing to the stringency of the times the trustees were of opinion that they should have power to employ the capital as well as the income of the trust fund for the purposes specified in cl. 3. The Cheltenham Society had duly passed a resolution authorising the revocation of cl. 5 and the substitution of a clause authorising the application of the whole or any part of the capital of the trust for the purposes specified in cl. 3. By this summons the trustees asked whether the proposed variation of the trust deed was within their powers.

SIMONDS, J., said that whether cl. 3 stood alone or whether it was connected with cl. 5 he could give it no other meaning than that it imposed on the trustees the obligation to employ the income only of the trust fund in perpetuity for one or other of the purposes authorised in the clause. The exception of cl. 3 from the power of revocation was sufficient to prevent the trustees from employing any part of the corpus of the fund.

COUNSEL: *Geoffrey Cross; W. F. Waite; Danckwerts.*

SOLICITORS: *Herbert Reeves & Co.; Treasury Solicitor.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION.

Charente Steamship Co., Ltd. *v.* Wilmot.

Macnaghten, J. 14th July, 1941.

Revenue—Income tax—Plant and machinery—Replacement of ships—Old ships sold—Depreciation allowances plus sale price sometimes less sometimes more than cost price—Whether deficiencies extinguishable by surpluses for tax purposes—Income Tax Act, 1918 (8 & 9 Geo. 5, c. 40), Sched. D, Rules applicable to Cases I and II, r. 7.

Appeal by case stated from a decision of the Commissioners for the Special Purposes of the Income Tax Acts.

The appellant company owned some fifty steamships. Particular vessels were, according to a regular plan of revision, from time to time deemed to have become unsuitable for the company's business, and were sold and replaced by more suitable vessels. The decision to sell a ship could not always be acted on immediately, as it might be difficult to find a buyer, and might take time to find a suitable vessel as a replacement. A vessel intended for sale might therefore be retained in service, although uneconomical, for some time longer. During their trading year ending the 31st December, 1935, the company decided to dispose of six vessels and to replace them by other vessels purchased in the same year. Three of the vessels were sold in 1936 and the remainder in 1938, the latter having been retained until a suitable opportunity for sale arose. Of the three vessels sold in 1938, in the case of one, the s.s. "Patrician," the total amount of the allowances which had been made in respect of her for wear and tear, when added to the sale price, amounted to less than the original cost price. With the other two vessels sold in 1938 the total of the allowances added to the sale price resulted in a surplus over the original cost price. The company claimed that in the computation of their liability to income tax for the material year a deduction should be allowed under r. 7 of the Rules applicable to Cases I and II of Sched. D to the Income Tax Act, 1918, in respect of the replacement of obsolete plant and machinery, the claim being in respect of the deficiency arising on the sale of the s.s. "Patrician." The Crown contended that, in the application of r. 7, the plant and machinery of the assessee must be considered as a whole, and that in the determination of whether any deduction should be allowed in respect of such a deficiency as appeared in the case of the s.s. "Patrician" regard must be had to the net result of the replacement of all the plant replaced in the material year and therefore to the surplus resulting on the sale of the other two vessels replaced. The Crown further contended that, as the "Patrician" had not been sold until 1938, no replacement had taken place until then, and that no *prima facie* case for replacement had accordingly arisen in the material year. The company contended that the sale of a vessel was the sale of a capital asset, and that any surplus of the kind in question which resulted was a capital profit which must be disregarded in a computation directed only to income. The Special Commissioners found as a fact that the "Patrician" had been replaced in the material year within the meaning of r. 7, but held that regard must be had to the net result of all the replacements. The company appealed.

MACNAGHTEN, J., said that if a shipowner sold his ship for more than she cost, income tax was not chargeable on the excess because income tax was a tax on income, and not on capital or the appreciation of a capital asset such as a ship, which it was agreed came within the expression "plant and machinery" in r. 7. It would be whimsical to construe the rule, which on the face of it purported to give relief from taxation, in such a way that it would in effect tax something which would otherwise be exempt. The short answer to the Crown's contention was that the rule on the face of it referred only to the case where there was a "deficiency" on the replacement of obsolete "plant and machinery"—i.e., of a capital asset. The rule presupposed that allowances for depreciation of the asset had been made in previous years, and that the result of the replacement was a "deficiency." The rule did not refer to a replacement which had resulted in a "surplus"; there was no sufficient reason for implying into it what it did not express. The appeal should be allowed.

COUNSEL: *Tucker*, K.C., and *H. I. Nelson; The Solicitor-General* (Sir William Jowitt, K.C.) and *R. P. Hills.*

SOLICITORS: *Simpson, North, Harley & Co.; The Solicitor of Inland Revenue.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Allchin (Inspector of Taxes) *v.* South Shields Corporation.

Lawrence, J. 13th October, 1941.

Revenue—Income tax—Local authority—Payment of interest—Deduction of income tax—Interest paid out of profits charged to tax—Profits made on undertakings other than that to which interest relates—Whether authority entitled to retain tax deducted.

Appeal by case stated from a decision of the Commissioners for the Special Purposes of the Income Tax Acts.

In the year of assessment 1935–36 the respondent corporation paid interest on borrowed money amounting to £132,396, deducting income tax. In the same year the profits of the corporation brought into charge to tax amounted to £91,504. The corporation agreed that they were liable to account to the Crown for tax on the difference between £132,396 and £91,504, namely, £40,892. Included in the £91,504 were the profits of the corporation's electricity and transport undertakings for 1935–36, which, after payment of interest on moneys borrowed for the purpose of those undertakings, amounted to respectively £12,628, and £2,589, totalling £15,217. By s. 113 of the South Shields Corporation Act, 1935, the corporation had to keep separate accounts for their various undertakings. The receipts from those undertakings all flowed into the general rate fund, and all payments were made out of that fund under s. 112. Section 114 provided, *inter alia*, that if in any year the moneys received by the corporation on account of the revenue of any undertaking exceeded the moneys expended by the corporation for certain defined purposes of that undertaking, the corporation might apply out of the general rate fund a sum not exceeding the amount of the excess for various further purposes of the undertaking specified in the section. Section 115 dealt with the surplus revenue of the electricity undertaking. It was contended for the corporation, *inter alia*, that the whole £132,396 interest was payable out of the general rate fund, even so far as that fund consisted of profits made by other undertakings of the corporation, and therefore that it was lawful to apply to that payment the £91,504 in the fund which was profits already taxed. The Commissioners were of opinion that the applications of money which the corporation were empowered to make under ss. 114 and 115 of the Act of 1935 had to be made out of the general rate fund, and therefore that the corporation possessed in the general rate fund a taxed fund of £91,504 out of which they could legally pay the interest in question, and that they must be deemed to have paid the interest primarily out of the taxed income. The Crown appealed.

(*Cur. adv. vult.*)

LAWRENCE, J., said that the real question raised by the appeal was, as resulted from *Sugden* v. *Leeds Corporation* (1913), 57 SOL. J. 425; 29 T.L.R. 402, whether it was lawful for the corporation to use the profits resulting from certain of their undertakings in payment of interest due on their bond in respect of another of their undertakings, the revenue from which was insufficient to pay that interest. It was difficult to understand why the objects were specified in ss. 112–115 to which the corporation might apply the excess of revenue over expenditure of any of their undertakings if they were free to apply any such excess as they pleased. It might well have been the policy of the legislature that any excess from an undertaking, if not used for the specified purposes, should be retained in the general rate fund and so operate to the relief of rates. The appeal must be allowed.

COUNSEL: *The Attorney-General* (Sir Donald Somervell, K.C.) and *R. P. Hills*, for the Crown; *Sir Patrick Hastings*, K.C., *Tucker*, K.C., and *T. Donovan*, for the corporation.

SOLICITORS: *The Solicitor of Inland Revenue; Speechly, Mumford and Craig*, for the Town Clerk, South Shields.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]